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Item 3 of the provisional agenda

SURVEY OF EXISTING AGREEMENTS AND INSTRUMENTS, AND CRITERIA FOR EVALUATION

Note by the Secretariat

1. According to the terms of reference adopted by the Preparatory Committee for the United Nations Conference on Environment and Development at its second session (A/46/48, Part I, decision 2/3), Working Group III is expected to prepare an annotated list of existing international agreements and international legal instruments in the environmental field, describing their purpose and scope, evaluating their effectiveness, and examining possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries.

2. In order to facilitate discussion in the Working Group, the present note contains a draft list of existing international agreements and international legal instruments to be evaluated for this purpose, together with draft criteria for their evaluation in view of the further development of environmental law.

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3. The following documents already submitted or currently being circulated to the Preparatory Committee include information relevant to the evaluation of international agreements and instruments in specific sectors:

A/CONF.151/PC/59 (Working Group I)	Protection of the atmosphere: transboundary air pollution
A/CONF.151/PC/58 (Working Group I)	Protection of the atmosphere: Ozone layer
A/CONF.151/PC/31 (Working Group II)	Global aspects of marine pollution: Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
A/CONF.151/PC/7 (Working Group II)	Evaluation of the Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-based Sources
A/CONF.151/PC/69 (Working Group II)	Protection of the oceans and all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources: international institutions and legal instruments
A/CONF.151/PC/79 (Working Group III)	Progress report on the development of legal instruments for transboundary waters

I. DRAFT LIST OF AGREEMENTS AND INSTRUMENTS

4. The range of existing international agreements and instruments in the environmental field includes formal multilateral treaties at the global and regional level; international technical rules and regulations in sectors having a bearing on environmental protection; and a number of instruments that are not legally binding (* marked by an asterisk in the draft list which follows) but because of their adoption at an intergovernmental level may be considered as initial steps in the development of international environmental law.

5. The present draft list is essentially concerned with environmental protection against man-made risks, and therefore does not include agreements or instruments that are primarily aimed at natural risks or diseases (such as international sanitary, veterinary or phytosanitary rules); nor does it cover the multitude of existing arrangements dealing with bilateral environmental cooperation or with shared geographically limited resources (such as specific watercourses), or the internal environmental enactments of regional economic integration organizations. While any selection or categorization will to some

extent be arbitrary, the principal consideration should be the relevance of an agreement or instrument to the further development of international environmental law.

	A. General environmental concerns	Parties
(1)	Nordic Convention on the Protection of the Environment (Stockholm, 19 February 1974)	regional: 4
(2)*	Principles Concerning Transfrontier Pollution, and related recommendations on Equal Rights of Access and Non-Discrimination (1974 to 1977)	regional (OECD)
(3)	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (Geneva, 18 May 1977)	global: 54
(4)	Protocols I and II to the 1949 Convention Relating to the Protection of Victims of International Armed Conflicts (Geneva, 8 June 1977)	global: 99/89
(5)*	Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (Nairobi, 19 May 1978)	global (UNEP)
(6)	European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities (Madrid, 21 May 1980)	regional: 16
(7)	Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects, and related protocols (Geneva, 10 October 1980)	global: 32
(8)*	Goals and Principles of Environmental Impact Assessment (Nairobi, 17 June 1987)	global (UNEP)
(9)	Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991)	regional (ECE) -not in force-

B. Nature conservation and terrestrial living resources

(10)	Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Washington, 12 October 1940) as amended	regional: 19
(11)	International Convention for the Protection of Birds (Paris, 18 October 1950), and related regional instruments (1972-1979)	global: 10
(12)	Antarctic Treaty (Washington, 1 December 1959) and related agreements and protocols (1964-1991)	global: 39
(13)	African Convention on the Conservation of Nature and Natural Resources (Algiers, 15 September 1968)	regional: 29
(14)	Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971) as amended	global: 62
(15)	Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 12 November 1972)	global (UNESCO): 116
(16)	Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973) as amended	global (UNEP): 110
(17)	Agreement on Conservation of Polar Bears (Oslo, 15 November 1973)	regional: 5
(18)	Convention on Conservation of Nature in the South Pacific (Apia, 12 June 1976)	regional: 5
(19)	Treaty for Amazonian Co-operation (Brasilia, 3 July 1978)	regional: 8
(20)	Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)	global (UNEP): 34
(21)	Convention on the Conservation of European Wildlife and Natural Habitats (Berne, 19 September 1979)	regional: 25

(22)	Convention for the Conservation and Management of the Vicuña (Lima, 20 December 1979)	regional: 4
(23)	International Tropical Timber Agreement (Geneva, 18 November 1983)	global (UNCTAD): 50
(24)*	International Undertaking on Plant Genetic Resources (Rome, 23 November 1983) as supplemented	global (FAO): 102
(25)	ASEAN Agreement on the Conservation of Nature and Natural Resources (Kuala Lumpur, 9 July 1985)	regional: 6
C.	Atmosphere	
(26)	Regulations concerning gaseous pollutant emissions from motor vehicles, pursuant to the Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (Geneva, 20 March 1958), as amended and supplemented (1970-1991)	regional (ECE): 21
(27)	Convention on Long-range Transboundary Air Pollution (Geneva, 13 November 1979), and related protocols (1984-1988)	regional (ECE): 32
(28)*	Provisions for Co-operation Between States on Weather Modification (Nairobi, 29 April 1980)	global (UNEP)
(29)	Annex 16 (II) on aircraft engine emissions, to the 1944 Chicago Convention on International Civil Aviation (Montreal, 30 June 1981, as amended in 1988)	global (ICAO)
(30)	Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985) and Montreal Protocol, 1987 as amended	global (UNEP): 77
D.	Marine environment	
(31)	Convention for the International Council for the Exploration of the Sea (Copenhagen, 12 September 1964) as amended	global: 17

(32)	International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969) and related 1976 protocol, as amended	global (IMO): 69
(33)	International Convention Relating to Intervention on the High Seas in Case of Oil Pollution Casualties (Brussels, 29 November 1969) and related 1973 protocol	global (IMO): 57
(34)	Nordic Agreement concerning Co-operation in Measures to Deal with Pollution of the Sea by Oil (Copenhagen, 16 September 1971)	regional: 4
(35)	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December 1971) and related protocols (1976-1984)	global (IMO): 45
(36)	Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972) as amended	regional: 13
(37)	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London, 29 December 1972) as amended	global: 63
(38)	International Convention for the Prevention of Pollution from Ships (London, 2 November 1973) and 1978 Protocol, as amended	global (IMO): 66
(39)	Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 22 March 1974) as amended	regional: 6
(40)	Convention on the Prevention of Marine Pollution from Land-based Sources (Paris, 4 June 1974) as amended	regional: 13
(41)	Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, 16 February 1976) and related protocols (1976-1982)	regional (UNEP): 19

(42)	Convention on Civil Lability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources (London, 1 May 1977)	regional: -not in force-
(43)	Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait, 23 April 1978), and related protocols (1978-1989)	regional (UNEP): 8
(44)	Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, and related protocol (Abidjan, 23 March 1981)	regional (UNEP): 10
(45)	Convention for the Protection of the Marine Environment and Coastal Area of the Southeast Pacific (Lima, 12 November 1981), and related protocols (1983-1989)	regional (UNEP): 5
(46)*	Memorandum of Understanding on Port State Control in Implementing Agreements on Maritime Safety and Protection of the Marine Environment (Paris, 26 January 1982)	regional: 14
(47)	Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, and related protocol (Jeddah, 14 February 1982)	regional (UNEP): 7
(48)*	Guidelines Concerning the Environment Related to Offshore Mining and Drilling within the Limits of National Jurisdiction (Nairobi, 31 May 1982)	global (UNEP)
(49)	United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982)	global: (47) -not in force-
(50)	Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena, 24 March 1983), and related protocols (1983-1990)	regional (UNEP): 17

(51)	Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn, 13 September 1983)	regional: 10
(52)*	Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-based Sources (Nairobi, 24 May 1985)	global (UNEP)
(53)	Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, and related protocols (Nairobi, 21 June 1985)	regional (UNEP): (5) -not in force-
(54)	Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, and related protocols (Noumea, 24 November 1986)	regional (UNEP): 10
(55)	International Convention on Salvage (London, 28 April 1989)	global (IMO): (2) -not in force-
(56)	Agreement on Co-operation for Combating Pollution in the Northeast Atlantic (Lisbon, 17 October 1990)	regional: (5) -not in force-
(57)	International Convention on Oil Pollution Preparedness, Response and Co-operation (London, 29 November 1990)	global (IMO) -not in force-

E. Marine Living Resources

(58)	International Convention for the Regulation of Whaling (Washington, 2 December 1946) as amended	global: 40
(59)	Agreement for the Establishment of the Indo-Pacific Fishery Commission (Baguio, 26 February 1948) as amended	global (FAO): 19
(60)	Convention for the Establishment of an Inter-American Tropical Tuna Commission (Washington, 31 May 1949) and related agreement (1983)	regional: 5
(61)	Agreement for the Establishment of the General Fisheries Council for the Mediterranean (Rome, 6 December 1949) as amended	global (FAO): 19

(62)	Agreement concerning Measures for Protection of the Stocks of Deep-Sea Prawns, European Lobsters, Norway Lobsters and Crabs (Oslo, 7 March 1952)	regional: 3
(63)	International Convention for the High Seas Fisheries of the North Pacific Ocean (Tokyo, 9 May 1952)	regional: 3
(64)	Convention on the Organization of the Permanent Commission on the Exploitation and Conservation of the Maritime Resources of the South Pacific (Santiago, 18 August 1952) and related agreements (1954-1979)	regional: 4
(65)	Interim Convention on North Pacific Fur Seals (Washington, 2 February 1957) as amended	regional: 4
(66)	International Convention for the Conservation of Atlantic Tunas (Rio de Janeiro, 14 May 1966) as amended	global (FAO): 24
(67)	Convention on the Conservation of the Living Resources of the Southeast Atlantic (Rome, 23 October 1969)	global (FAO): 16
(68)	Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belts (Gdansk, 13 September 1973) as amended	regional: 5
(69)	Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (Ottawa, 24 October 1978)	global: 13
(70)	South Pacific Forum Fisheries Convention (Honiara, 10 July 1979) and related agreements (1982-1989)	regional: 15
(71)	Convention on Future Multilateral Co-operation in the Northeast Atlantic Fisheries (London, 18 November 1980)	global: 11
(72)	Convention for the Conservation of Salmon in the North Atlantic Ocean (Reykjavik, 2 March 1982)	regional: 9

(73)	Agreement on the Network of Aquaculture Centres in Asia and the Pacific (Bangkok, 8 January 1988)	regional: 9
F.	Hazardous substances	
(74)*	Recommendations on the Transport of Dangerous Goods (Geneva, 26 April 1957, 7th revision 1990)	global (ECOSOC)
(75)	European Agreement Concerning the International Carriage of Dangerous Goods by Road (Geneva, 30 September 1957) as amended	regional (ECE): 20
(76)	European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products (Strasbourg, 16 September 1968)	regional: 10
(77)	Convention for the Mutual Recognition of Inspections in Respect of the Manufacture of Pharmaceutical Products (Geneva, 8 October 1970)	global: 15
(78)	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (London, Moscow, Washington, 10 April 1972)	global: 106
(79)*	Decisions and recommendations on Mutual Acceptance of Data in the Assessment of Chemicals and Good Laboratory Practices (1981-1989)	regional (OECD)
(80)*	International Code of Conduct on the Distribution and Use of Pesticides (Rome, 19 November 1985) as amended	global(FAO)
(81)*	London Guidelines for the Exchange of Information on Chemicals in International Trade (Nairobi, 17 June 1987) as amended	global (UNEP)
(82)	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989)	global (UNEP): (10) -not in force-

(83)	Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (Geneva, 10 October 1989)	regional (ECE) -not in force-
(84)	Convention on the Ban of the Import into Africa and the Control of Transboundary Movements and Management of Hazardous Wastes within Africa (Bamako, 30 January 1991)	regional (OAU) -not in force-
G.	Nuclear safety	
(85)*	Resolution 913 (X) establishing the Scientific Committee on the Effects of Atomic Radiation (New York, 3 December 1955)	global (UNGA)
(86)	Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960) as amended and supplemented	regional (OECD): 14
(87)	Convention on the Liability of Operators of Nuclear Ships (Brussels, 25 May 1962)	global (IAEA) -not in force-
(88)	Convention on Civil Liability for Nuclear Damage (Vienna, 21 May 1963) and related protocols (1963-1988)	global (IAEA): 10
(89)	Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (Moscow, 5 August 1963)	global: 118
(90)	Treaty for the Prohibition of Nuclear Weapons in Latin America (Tlatelolco, 14 February 1967)	regional: 31
(91)	Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Brussels, 17 December 1971)	global (IMO): 12
(92)	South Pacific Nuclear-Free Zone Treaty (Raratonga, 8 August 1985)	regional: 13
(93)	Conventions on Early Notification of a Nuclear Accident, and on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, 26 September 1986)	global (IAEA): 57/53

H. Working environment

(94)	Convention Concerning the Protection of Workers Against Ionizing Radiations (Geneva, 22 June 1960)	global (ILO): 39
(95)	Convention Concerning Protection Against Hazards of Poisoning from Benzene (Geneva, 23 June 1971)	global (ILO): 27
(96)	Convention Concerning Prevention and Control of Occupational Hazards Caused by Carcinogenic Substances and Agents (Geneva, 26 June 1974)	global (ILO): 24
(97)	Convention Concerning Protection of Workers Against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (Geneva, 20 June 1977)	global (ILO): 25
(98)	Convention Concerning Occupational Safety and Health and the Working Environment (Geneva, 22 June 1981)	global (ILO): 13
(99)	Convention Concerning Safety in the Use of Asbestos (Geneva, 24 June 1986)	global (ILO): 11
(100)	Convention on Safety in the Use of Chemicals at Work (Geneva, 24 June 1990)	global (ILO): -not in force-

II. DRAFT CRITERIA FOR EVALUATION

6. In carrying out an evaluation of the effectiveness of existing agreements and instruments, the Working Group may wish to focus on a number of common criteria, which could also provide guidance in the identification of gaps and possible areas for the further development of international environmental law. (Some of the draft criteria listed may not be applicable to declaratory/non-binding instruments).

A. Participation

(1) What is the current range of membership in existing environmental agreements and instruments, especially as regards developing countries?

(2) What is the record of actual participation by member States in programme activities and meetings organized under these agreements and instruments?

(3) Which incentives (e.g., financial, trade, technology benefits) are available to encourage participation, especially by developing countries?

(4) Which have been the major obstacles (if any) preventing wider participation, especially by developing countries?

(5) In the case of regional agreements and instruments, what is their actual and potential bearing on global environmental protection?

NOTE: Current information on the membership (signature, ratification, accession) status for most of the agreements and instruments listed in section I above is provided, on an annual basis, in the UNEP Register of International Treaties and Other Agreements in the Field of the Environment (Nairobi, UNEP/GC.16/Inf.4, 1991, available in all official languages), and in the United Nations publication Multilateral Treaties Deposited with the Secretary-General (New York, 1991, available in English and French).

B. Monitoring and reporting

(6) To what extent have the basic objectives (environmental/economic) of these international agreements and instruments been met, and how is goal achievement measured?

(7) How is compliance by parties with their obligations under these agreements and instruments monitored?

(8) How do parties report on their performance in implementing agreements and instruments, and to what extent have they complied with reporting duties?

(9) Which are the specific requirements (if any) of data supply and data disclosure, and to what extent have they been met by the parties?

(10) Which have been the main obstacles (if any) to reporting, data supply and data disclosure?

(11) Which possibilities exist to follow up on non-compliance, and to what extent have they been used?

(12) Which mechanisms, including fact-finding procedures, are available to deal with disputes over implementation and to what extent have they been used?

NOTE: A number of international environmental agreements and instruments contain provisions for compliance control and/or an obligation for parties to submit, through the secretariat, regular performance reports for public review. Periodic progress reports on the implementation of specific instruments (such as the UNEP Guidelines on Shared Natural Resources) are also submitted to the General Assembly through the UNEP Governing Council, based on performance reports solicited from Governments and organizations. A major part of compliance control for many environmental agreements and instruments consists of the collection and analysis of data to substantiate and verify implementation by the parties.

C. Information

(13) In which form and in which languages are the texts of existing agreements and instruments published and disseminated?

(14) How is current information on the operation and implementation of international agreements and instruments made available to Governments, to the industries concerned and to the general public?

(15) What additional materials are available to provide guidance for the implementation of international agreements and instruments at the national level?

(16) To what extent is the above information used in international and national training and education programmes?

NOTE: Further to official publication of treaty texts in the United Nations Treaty Series (which, however, suffers from a general printing backlog of more than 10 years) several unofficial collections of international environmental agreements and instruments exist, including the UNEP Reference Series of Selected Multilateral Treaties in the Field of the Environment (available in English and French) and the UNEP Environmental Law Guidelines and Principles (available in all official languages). In addition, secretariats in charge of administering some of these agreements and instruments have issued public information material or regular information bulletins concerning these instruments. The United Nations Institute for Training and Research (UNITAR) has undertaken a number of programmes which include the promotion of international legal instruments for environment and development. Several non-governmental institutions and associations play an important role in this field.

D. Operation and adjustment

(17) Which are the institutional arrangements for international administration of existing agreements and instruments?

(18) What are the annual (1990) costs of international administration (secretariat, meetings, programmes) of agreements and instruments, and how are they financed?

(19) Which are the main cost elements of national participation in existing agreements and instruments and which possibilities exist to reduce participation costs for developing countries?

(20) To what extent has technical cooperation been provided to developing countries for implementing international agreements and legal instruments in the field of environment?

(21) Which mechanisms are available to ensure that scientific knowledge and advice is taken into account in policy-making decisions under these agreements and instruments?

(22) How do these arrangements and mechanisms ensure the effective participation of (a) national authorities, especially from developing countries; and (b) non-governmental participants, including the industries concerned and the scientific community?

(23) Which mechanisms are available to ensure periodic review and timely adjustment of international agreements and instruments, and to what extent have they been used?

NOTE: The process by which international law-making treaties are formulated and brought into force was extensively examined by the General Assembly in the United Nations Review of the Multilateral Treaty-Making Process (ST/LEG/SER.B/21, 1981). Information on the actual operation of treaty regimes will have to be compiled from a cross-section of reports to the governing bodies concerned, together with available external analyses. Technical assistance to Governments for the necessary implementing measures and institutions has been provided ad hoc by UNEP and by several specialized agencies within their areas of competence, and could play an important role in promoting wider participation. In view of the need for rapid and frequent adjustment of environmental agreements and instruments to changing circumstances and to scientific and technological progress, flexible amendment procedures have proved essential. In addition, several existing agreements provide for periodic review conferences to assess implementation and policy adaptation.

E. Codification programming

(24) Which new drafts or draft revisions of existing agreements and instruments in the environmental field are currently under preparation?

(25) To what extent is drafting coordinated with related work regarding other agreements and instruments?

(26) Which are the remaining gaps that need to be covered by legal provisions?

(27) To what extent are mechanisms other than formal agreements or instruments contributing to the development of international law in the field of the environment?

NOTE: An "in-depth review" of international environmental law, summarizing the activities of competent intergovernmental and non-governmental organizations, was carried out by UNEP, (UNEP Report No. 2, 1981, in English only), as part of preparations for the long-term "Programme for the Development and Periodic Review of Environmental Law" adopted in 1982 by Governing Council decision 10/21 (endorsed by the General Assembly in its resolution 37/217); an update is planned for 1991. Summaries of "legislative" activities within the United Nations system are published in the United Nations Juridical Yearbook (up to 1984, in English, French and Spanish). Environmental law activities are included in the "system-wide medium-term environment programme" (SWMTEP 1990-1995, UNEP/GCSS.I/7/Add.1), and regular inter-agency consultations are held in sectors such as water resources and ocean affairs. Furthermore, some of the regional bodies in charge of administering environmental conventions have initiated direct

consultations to avoid potential conflicts or overlaps. There also is a considerable amount of standard-setting ongoing that is not based on specific environmental agreements and instruments but on the constitutional functions of existing international bodies. An overview of current and planned drafting work in this field could assist in harmonizing global and regional codification programmes.

III. GUIDANCE FOR FURTHER LEGAL WORK

7. The Working Group is expected to examine possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the needs and concerns of developing countries. Areas to be examined in this context are, in particular:

(a) priorities for future law-making at the global, regional and national level;

(b) measures to promote and support the effective participation of developing countries in existing and future international agreements or instruments;

(c) international compliance control, regular scientific assessment and timely adjustment of agreements or instruments;

(d) coordination and streamlining of (global and regional) institutions and procedures for the administration of international agreements and instruments;

(e) resolution and prevention of conflicts, including potential conflicts between environmental and economic/trade agreements or instruments.

NOTE: Relevant materials include, in particular, the draft instruments being prepared by the United Nations International Law Commission, especially in connection with its work on state responsibility; on a draft code of crimes against the peace and security of mankind; on the law of the non-navigational uses of international watercourses; and on international liability for injurious consequences arising out of acts not prohibited by international law (see the report of the International Law Commission on the work of its forty-second session, Official Records of the General Assembly, Forty-fifth session, Supplement No. 10, A/45/10, 1990; and the comments by Governments on recent work by the International Law Commission in these areas, summarized in document A/CN.4/L.456, 1991).

By resolution 44/23, the General Assembly declared the period 1990-1999 as the United Nations Decade of International Law, the main purposes of which include, inter alia, "to promote acceptance of and respect for the principles of international law" and "to encourage the progressive development of international law and codification". In this context, protection of the global environment was addressed in comments from States and organizations, summarized in the 1990 report of the Secretary General (United Nations Decade of International Law, A/45/430 and Addenda 1-3), including a project proposed by China on "developing countries and international legislation on environment" (A/45/430/Add.2), and a document submitted by Italy on the

conclusions of the 1990 Siena Forum on International Law of the Environment (A/45/666). A comprehensive report on this subject will be prepared by the United Nations Office of Legal Affairs, for submission to the 46th session of the General Assembly in 1991. The World Bank, in the context of its 1992 World Development Report, will undertake an assessment of the effectiveness of multilateral agreements in the field of the environment. The United Nations University has initiated a project on "international law and global change", with the aim of producing a major cooperative study and teaching materials in this field, expected to be completed in time for the 1992 United Nations Conference on Environment and Development.

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ANNOTATED CHECK-LIST OF PRINCIPLES ON GENERAL RIGHTS AND OBLIGATIONS

Note by the Secretariat

1. According to the terms of reference adopted by the Preparatory Committee for the United Nations Conference on Environment and Development at its second session (A/46/48, Part I, decision 2/3, sub-paragraph ii), Working Group III is expected to examine the feasibility of elaborating principles on general rights and obligations of States and regional economic integration organizations, as appropriate, in the field of environment and development, and to consider the feasibility of incorporating such principles in an appropriate instrument/charter/statement/ declaration, taking due account of the conclusions of all the regional preparatory conferences.

2. In order to facilitate discussion in the Working Group, the annex to the present note contains a check-list of elements that may be considered in the context of preparing principles on general rights and obligations in this field, with a view to possible inclusion in an "Earth Charter". The elements enumerated in the check-list have been compiled from a number of texts and proposals, including draft provisions made available to the Preparatory Committee and the secretariat. Inclusion in the check-list is not intended to

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prejudge whether or to what extent these elements reflect existing international rules of conduct, or in what manner they might become rules of conduct.

3. Where applicable, cross-references are provided in the annex to relevant existing texts which have already been endorsed at an intergovernmental level, including principles originating from the United Nations General Assembly, the World Commission on Environment and Development, and a number of regional conferences. In particular, reference is made to the following:

(a) Charter of the United Nations, adopted at San Francisco on 26 June 1945;

(b) International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly resolution 2200 (XXI) of 16 December 1966;

(c) Stockholm Declaration = Declaration of the United Nations Conference on the Environment (Stockholm, 16 June 1972), endorsed by United Nations General Assembly resolution 2994 (XXVII) of 15 December 1972;

(d) New International Economic Order = Charter of Economic Rights and Duties of States, adopted by United Nations General Assembly resolution 3281 (XXIX) of 12 December 1974;

(e) Helsinki Final Act = Final Act of the Conference on Security and Co-operation in Europe, adopted at Helsinki on 1 August 1975;

(f) Shared Natural Resources Principles = Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States, adopted by decision 6/14 of the UNEP Governing Council on 19 May 1978 (endorsed by United Nations General Assembly resolution 34/186 of 18 December 1979);

(g) United Nations General Assembly resolution 35/8 on the Historical Responsibility of States for the Preservation of Nature for Present and Future Generations, of 30 October 1980;

(h) African Charter on Human and Peoples' Rights, adopted by the Organization of African Unity at Nairobi on 27 June 1981;

(i) Nairobi Declaration, adopted by the UNEP Governing Council at its session of a special character, Nairobi, 18 May 1982;

(j) World Charter for Nature, adopted by United Nations General Assembly resolution 37/7 of 28 October 1982;

(k) Declaration on the Right to Development, adopted by United Nations General Assembly resolution 41/128 of 4 December 1986;

(l) Goals and Principles of Environmental Impact Assessment, adopted by decision 14/25 of the UNEP Governing Council on 17 June 1987 (endorsed by United Nations General Assembly resolution 42/184 of 11 December 1987);

(m) Environmental Perspective to the Year 2000 and Beyond, adopted by United Nations General Assembly resolution 42/186 of 11 December 1987;

(n) Brundtland Legal Principles = Proposed Legal Principles for Environmental Protection and Sustainable Development, appended to the Report of the World Commission on Environment and Development (endorsed by United Nations General Assembly resolution 42/187 of 11 December 1987) A/42/427, Annex;

(o) Salvador Protocol = Additional Protocol on Economic, Social and Cultural Rights (to the 1969 American Convention on Human Rights), adopted at San Salvador on 14 November 1988;

(p) Langkawi Declaration = Declaration on Environment adopted by the Heads of Government of the Commonwealth at Langkawi (Malaysia) on 21 October 1989, A/44/673;

(q) Bergen Declaration = Ministerial Declaration on Sustainable Development in the ECE Region, adopted at Bergen (Norway) on 16 May 1990, A/CONF.151/PC/10, Annex I;

(r) Bangkok Declaration = Ministerial Declaration on Environmentally Sound and Sustainable Development in Asia and the Pacific, adopted at Bangkok on 16 October 1990; A/CONF.151/PC/38, Annex 2;

(s) United Nations General Assembly resolution 45/94 on the Need to Ensure a Healthy Environment for the Well-being of Individuals, of 14 December 1990;

(t) Tlatelolco Platform = Platform on Environment and Development in Latin America and the Caribbean, adopted at Tlatelolco (Mexico) on 7 March 1991, A/CONF.151/PC/L.30.

ANNEX

I. BASIC DUTIES

(1) Common responsibility of nations and peoples for the survival/integrity/ sovereignty of the Earth

- New International Economic Order, (1974, article 30:)
"The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environmental and developmental policies in conformity with such responsibility."

- Nairobi Declaration (1982, paragraph 9):
"Responsible individual behaviour and involvement are essential in furthering the cause of the environment. Non-governmental organizations have a particularly important and often inspirational role to play in this sphere. All enterprises, including multinational corporations, should take account of their environmental responsibilities when adopting industrial production methods or technologies, or when exporting them to other countries."

- World Charter for Nature (1982, article 24);
"Each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met."

(2) Avoidance of harm to future generations

- Stockholm Declaration (1972, principle 2):
"The natural resources of the Earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

- United Nations General Assembly resolution 35/8 (1980, paragraph 1):
"Proclaims the historical responsibility of States for the preservation of nature for present and future generations."

- Brundtland Legal Principles (1987, principle 2):
"States shall conserve and use the environment and natural resources for the benefit of present and future generations."

- Bangkok Declaration (1990, paragraph 15):
"All economic and social development activities should meet the needs of the present generation without compromising the ability of future generations to meet their own needs."

(3) Principle of precautionary/preventive action

- Nairobi Declaration (1982, paragraph 9):
"Prevention of damage to the environment is preferable to the burdensome and expensive repair of damage already done. Preventive action should include proper planning of all activities that have an impact on the environment."

- Environmental Perspective to the Year 2000 and Beyond (1987, paragraph 3/f):
"Although it is important to tackle immediate environmental problems, anticipatory and preventive policies are the most effective and economical in achieving environmentally sound development."

- Bergen Declaration (1990, paragraph 7):
"In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation."

- Bangkok Declaration (1990, paragraph 19):
"To achieve sustainable development, policies must be based on the precautionary principle."

(4) Equitable sharing of responsibilities and benefits

- Stockholm Declaration (1972, principles 3 and 5):
"The capacity of the Earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved. The non-renewable resources of the Earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind."

- Brundtland Legal Principles (1987, principle 9):
"States shall use transboundary natural resources in a reasonable and equitable manner."

- Langkawi Declaration (1989, paragraph 5):
"The responsibility for ensuring a better environment should be equitably shared and the ability of developing countries to respond be taken into account."

(5) Protection of individual rights to environment and development

- International Covenant on Economic, Social and Cultural Rights (1966, article 12):
"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene ..."

- Stockholm Declaration (1972, principle 1):
"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."

- Declaration on the Right to Development (1986, article 1):
"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

- Brundtland Legal Principles (1987, principle 1):
"All human beings have the fundamental right to an environment adequate for their health and well-being."

- Salvador Protocol (1988, article 11):
"Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation and improvement of the environment."

- United Nations General Assembly resolution 45/94 (1990, paragraphs 1 and 2):
"Recognizes that all individuals are entitled to live in an environment adequate for their health and well-being; and calls upon Member States and intergovernmental and non-governmental organizations to enhance their efforts towards ensuring a better and healthier environment."

(6) Protection of indigenous peoples

- African Charter on Human and Peoples' Rights (1981, article 24):
"All peoples shall have the right to a general satisfactory environment favourable to their development."

- Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, adopted by the International Labour Organisation on 27 June 1989 (articles 2 and 4):
"Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity ... Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. Such special measures shall not be contrary to the freely expressed wishes of the peoples concerned. Enjoyment of the general rights of citizenship without discrimination shall not be prejudiced in any way by such special measures."

- Tlatelolco Platform (1991, paragraph 6):
"... Current models of development have failed to take account of the importance of cultures which have evolved outside the framework of such models. The achievement of sustainable development requires the full

recognition of the importance of these cultures, since they have accumulated extensive knowledge of the natural world and have developed modalities for its sustainable use and management."

(7) Preservation of biological diversity/optimum sustainable yield

- World Charter for Nature (1982, article 4):
"Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist."

- Brundtland Legal Principles (1987, principle 3):
"States shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, shall preserve biological diversity, and shall observe the principle of optimum sustainable yield in the use of living natural resources and ecosystems."

(8) Promotion of environmental education and awareness

- Stockholm Declaration (1972, principle 19):
"Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension."

- Helsinki Final Act (1975, section 5):
"The success of any environmental policy presupposes that all population groups and social forces, aware of their responsibilities, help to protect and improve the environment, which necessitates continued and thorough educative action, particularly with regard to youth."

- Environmental Perspective to the Year 2000 and Beyond (1987, paragraph 3/1):
"Building awareness at various levels of environmental conditions and management, through the provision of information, education and training, is essential for environmental protection and improvement."

- Convention on the Rights of the Child, adopted by United Nations General Assembly resolution 44/25 of 20 November 1989 (article 29/1/e):
"States Parties agree that the education of the child shall be directed to ... the development of respect for the natural environment."

- Bangkok Declaration (1990, paragraph 29):
"Reaffirm the necessity to promote environmental education, especially of the younger generations, as well as other measures to increase awareness of the value of the environment."

II. PRINCIPLES OF DECISION-MAKING

(9) Precedence of long-term sustainable development over short-term special interests

- World Charter for Nature (1982, article 8):
"In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology."

- Brundtland Legal Principles (1987, principle 7):
"States shall ensure that conservation is treated as an integral part of the planning and implementation of development activities and provide assistance to other States, especially to developing countries, in support of environmental protection and sustainable development."

- Langkawi Declaration (1989, paragraph 5):
"The need to protect the environment should be viewed in a balanced perspective and due emphasis be accorded to promoting economic growth and sustainable development, including eradication of poverty, meeting basic needs, and enhancing the quality of life."

(10) Accounting of environmental assets and resources

- Bergen Declaration (1990, paragraph 13/b):
"To develop sound national indicators for sustainable development to be taken account of in economic policy making: one of the ways to achieve this is to supplement national accounting systems in order to reflect as fully as possible the importance of natural resources as depletable or renewable economic assets; ... to investigate the possibilities of changing the present forms of resource accounting in investment analysis in order to give greater emphasis to long-term sustainability compared with short-term considerations."

(11) Full allocation of environmental costs to economic activities ("polluter-pays" and "user-pays" principles)

- Recommendation on the Implementation of the Polluter-Pays Principle, adopted by the Council of the Organization for Economic Co-operation and Development (OECD) on 14 November 1974:
"The Polluter-Pays Principle ... means that the polluter should bear the expenses of carrying out the pollution prevention and control measures introduced by public authorities in Member countries, to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption."

- Recommendation on the Application of the Polluter-Pays Principle to Accidental Pollution, adopted by the OECD Council on 7 July 1989:
"In matters of accidental pollution risks, the Polluter-Pays Principle implies that the operator of a hazardous installation should bear the

cost of reasonable measures to prevent and control accidental pollution from that installation which are introduced by public authorities in Member countries in conformity with domestic law prior to the occurrence of an accident, in order to protect human health or the environment."

(12) Prior assessment of environmental risks

- World Charter for Nature (1982, article 11/c):
"Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects."

- Goals and Principles of Environmental Impact Assessment (1987, principle 1):
"States (including their competent authorities) should not undertake or authorize activities without prior consideration, at an early stage, of their environmental effects. Where the extent, nature or location of a proposed activity is such that it is likely to significantly affect the environment, a comprehensive environmental impact assessment should be undertaken in accordance with the following principles."

- Brundtland Legal Principles (1987, principle 5):
"States shall make or require prior environmental assessments of proposed activities which may significantly affect the environment or use of a natural resource."

- Bergen Declaration (1990, paragraph 16/f):
"To undertake the prior assessment and public reporting of the environmental impact of projects which are likely to have a significant effect on human health and the environment and, so far as practicable, of the policies, programmes and plans which underlie such projects and to ensure that East European and developing countries are assisted through bilateral and multilateral channels in evaluating the environmental impact and sustainability of their own development projects; to develop or expand procedures to assess the risks and potential environmental impacts of products."

(13) Burden of proof for environmental safety of projects andproducts

- World Charter for Nature (1982, article 11/b):
"Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed."

(14) Avoidance of irreversible environmental harm

- World Charter for Nature (1982, article 11/a):
"Activities which are likely to cause irreversible damage to nature shall be avoided."

- Bergen Declaration (1990, paragraph 7):
"Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."

(15) Priority given to poverty alleviation

- Environmental Perspective to the Year 2000 and Beyond (1987, paragraph 3/c):
"Since mass poverty is often at the root of environmental degradation, its elimination and ensuring equitable access of people to environmental resources are essential for sustainable development."

- Tlatelolco Platform (1991, paragraph 18):
"Efforts to link environmental improvement and development should take into account both local and global responsibilities and the close interrelationship between poverty and environmental deterioration. These efforts will be successful in so far as they are the result of, inter alia, access to decent living conditions, adequate levels of social organization, political representation and genuine participation of the population in the determination of their own development paths."

(16) Public participation in environmental decision-making

- World Charter for Nature (1982, article 23):
"All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation."

- Environmental Perspective to the Year 2000 and Beyond (1987, paragraph 3/h):
"Since conflicts of interest among population groups, or among countries, are often inherent in the nature of environmental problems, the participation of the concerned parties is essential in determining effective environmental management practices."

- Brundtland Legal Principles (1987, principle 6):
"States shall inform in a timely manner all persons likely to be significantly affected by a planned activity and to grant them equal access and due process in administrative and judicial proceedings."

- Bergen Declaration (1990, paragraph 16):
"Emphasizing the importance of participation by a well-informed and well-educated society so as to allow the public to mobilize itself to effect political change consistent with sustainable development ... (more detailed provisions in sub-paragraphs g, h and i)."

- Bangkok Declaration (1990, paragraph 27):
"Affirm the right of individuals and non-governmental organizations to be informed of environmental problems relevant to them, to have the necessary access to information, and to participate in the formulation and implementation of decisions likely to affect their environment."

(17) Procedure for environmental standard-setting, monitoring and reporting

- Brundtland Legal Principles (1987, principle 4):
"States shall establish adequate environmental protection standards and monitor changes in and publish relevant data on environmental quality and resource use."

- Bergen Declaration (1990, paragraph 16/e):
"To develop further national and international systems of periodic reporting of the state of the environment and to encourage open debate on the environmental implications of national policies."

III. PRINCIPLES OF TRANSNATIONAL RELATIONS

(18) Avoidance of harm to other nations and to the Earth as a whole

- Stockholm Declaration (1972, principle 21):
"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

- New International Economic Order (1974, article 30):
"All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

- Helsinki Final Act (1975, section 5):
"Each of the participating States, in accordance with the principles of international law, ought to ensure, in a spirit of cooperation, that activities carried out on its territory do not cause degradation of environment in another State or in areas lying beyond the limits of national jurisdiction."

- Brundtland Legal Principles (1987, principle 14):
"States shall cooperate in good faith with other States to achieve optimal use of transboundary natural resources and effective prevention or abatement of transboundary environmental interferences."

(19) Information and prior consultation on transnational environmental risks

- New International Economic Order (1974, article 3):
"In the exploitation of natural resources shared by two or more countries, each State must cooperate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others."

- Brundtland Legal Principles (1987, principles 15-17):
"States of origin shall provide timely and relevant information to the other concerned States regarding transboundary natural resources or environmental interferences. States shall provide prior and timely notification and relevant information to the other concerned States and shall make or require an environmental assessment of planned activities which may have significant transboundary effects. States of origin shall consult at an early stage and in good faith with other concerned States regarding existing or potential transboundary interferences with their use of a natural resource or the environment."

(20) Principle of prior informed consent regarding transnational movements of hazardous substances and wastes

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22 March 1989 (article 4/1/c):
"Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such waste."

- Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, adopted by the Governing Council of the United Nations Environment Programme (UNEP) on 25 May 1989:
"Prior informed consent (PIC) refers to the principle that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision, of the designated national authority in the importing country."

- Amended International Code of Conduct on the Distribution and Use of Pesticides, adopted by the Conference of the Food and Agriculture Organization of the United Nations (FAO) on 21 November 1989:
"Prior informed consent (PIC) refers to the principle that international shipment of a pesticide that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country."

(21) Notification and assistance in environmental emergencies

- Shared Natural Resources Principles (1978, principle 9):
"States have a duty urgently to inform other States which may be affected: (a) of any emergency situation arising from utilization of a shared natural resource which might cause sudden harmful effects on their environment; (b) of any sudden grave natural events related to a shared natural resource which may affect the environment of such States. States should also, when appropriate, inform the competent international organizations of any such situation or event. States concerned should cooperate, in particular by means of agreed contingency plans, when

appropriate, and mutual assistance, in order to avert grave situations, and to eliminate, reduce or correct, as far as possible, the effects of such situations or events."

- Brundtland Legal Principles (1987, principle 19):
"States shall develop contingency plans regarding emergency situations likely to cause transboundary environmental interferences and shall promptly warn, provide relevant information to and cooperate with concerned States when emergencies occur."

(22) Avoidance of hostile environmental modifications

- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted by United Nations General Assembly resolution 31/72 of 10 December 1976 (articles I and II):
"Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party ... The term 'environmental modification techniques' refers to any technique for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space."

- Additional Protocol I to the 1949 Conventions Relating to the Protection of Victims of Armed Conflict, adopted in Geneva on 8 June 1977 (article 35/3):
"It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."

- World Charter for Nature (1982, articles 5 and 20):
"Nature shall be secured against degradation caused by warfare or other hostile activities ... Military activities damaging to nature shall be avoided."

(23) Peaceful settlement of environmental disputes

- Charter of the United Nations (1945, article 33/1):
"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means."

- Environmental Perspective to the Year 2000 and Beyond (1987, paragraph 3/n):
"International environmental disputes, which are growing in number and variety, need to be resolved by peaceful means."

- Brundtland Legal Principles (1987, principle 22):
"States shall settle environmental disputes by peaceful means. If mutual agreement on a solution or on other dispute settlement arrangements is

not reached within 18 months, the dispute shall be submitted to conciliation and, if unresolved, thereafter to arbitration or judicial settlement at the request of any of the concerned States."

(24) Non-discriminatory treatment for foreign victims of transnational environmental harm

- Brundtland Legal Principles (1987, principle 13 and 20):
"States shall apply as a minimum at least the same standards for environmental conduct and impacts regarding transboundary natural resources and environmental interferences as are applied domestically (i.e. do not do to others what you would not do to your own citizens). States shall grant equal access, due process and equal treatment in administrative and judicial proceedings to all persons who are or may be affected by transboundary interferences with their use of a natural resource or the environment."

(25) Procedures for cessation of, and compensation for, transnational environmental harm

- Stockholm Declaration (1972, principle 22):
"States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction."

- New International Economic Order (1974, article 30):
"All States should cooperate in evolving international norms and regulations in the field of the environment."

- Brundtland Legal Principles (1987, principles 10, 11 and 21):
"States shall prevent or abate any transboundary environmental interference which could cause or causes significant harm. States shall take all reasonable precautionary measures to limit the risk when carrying out or permitting dangerous but beneficial activities and shall ensure that compensation is provided should substantial transboundary harm occur even when the activities were not known to be harmful at the time they were undertaken. States shall cease activities which breach an international obligation regarding the environment and provide compensation for the harm caused."

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Item 5 of the provisional agenda

DEVELOPMENT OF LEGAL INSTRUMENTS FOR TRANSBOUNDARY WATERS

Progress report by the secretariat

I. INTRODUCTION

1. At the second session of the Preparatory Committee for the United Nations Conference on Environment and Development, Working Group II considered the protection of the quality and supply of freshwater resources. The Working Group emphasized the need to take into account the work of the International Law Commission of the United Nations in developing legal instruments for the management of transboundary water resources and related water supply and water quality issues, and referred the question of the definition of legal principles for the protection, rational use and development of transboundary rivers and lakes to Working Group III and further requested the Secretary-General to report on progress achieved by the International Law Commission (A/46/48, Part I, decision 2/20, paragraph 2/p).

2. The present progress report has been prepared by the secretariat in order to facilitate discussion of this topic in Working Group III. It takes into account recent developments in the International Law Commission of the United Nations, which held its forty-third session in Geneva from 29 April to 19 July 1991, as well as related developments within the United Nations Economic Commission for Europe, regarding its regional draft convention on the protection and use of transboundary watercourses and international lakes.

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II. BACKGROUND

3. While a United Nations compilation published in 1964 contained provisions concerning transboundary watercourses from 253 agreements (ST/LEG/SER.B.B/12), a computerized systematic index prepared by the Food and Agriculture Organization of the United Nations (FAO) now lists more than 2,000 international legal instruments concerning water resources (FAO Legislative Study No. 15, 1978 as updated). The vast majority of these are bilateral agreements concerning specific boundary waters. The Montevideo Programme for the development and periodic review of environmental law, adopted by the UNEP Governing Council (decision 10/21 of 31 May 1982), called for "promotion of agreements between countries of the same hydrological basin for the proper utilization and management of freshwater resources so as to prevent, reduce and control pollution". Indeed, most of the existing multilateral agreements concern geographically limited freshwater basins; these are listed in appendix 1 to the present report, together with relevant non-mandatory/declaratory instruments adopted at an intergovernmental level. Not included here are non-governmental codifications, such as the 1966 Helsinki Rules on the Uses of the Waters of International Rivers drafted by the International Law Association; though highly authoritative, these drafts were not adopted in treaty form and were not the subject of government comments in the course of their preparation.

4. There have been various unsuccessful attempts at drafting legal provisions for transboundary watercourses at a wider regional level, especially within the framework of the Organization of American States (the 1965 Rio de Janeiro Draft Convention on the Industrial and Agricultural Use of International Rivers and Lakes) and within the Council of Europe (the 1974 and 1980 Draft European Conventions for the Protection of International Watercourses Against Pollution). More recently, at the initiative of the Conference on Security and Co-operation in Europe, the United Nations Economic Commission for Europe (ECE) was entrusted with the task of preparing a Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Drafting work on this instrument - which would be applicable to Europe and North America - is expected to be concluded by April 1992, and could provide inspiration for similar instruments in other regions.

5. The second ECE draft prepared in May 1991 (an outline of which is attached to the present report as appendix 2) defines transboundary waters in draft article 1 as "any surface and groundwaters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low water-line of their banks". The overall approach of the draft is that of a framework convention, to be supplemented by specific agreements between riparian countries. Among the principles specifically referred to in draft article 2 are the precautionary principle, the polluter-pays principle, and the principle of sustainable water use ("ecosystem approach").

III. THE WORK OF THE INTERNATIONAL LAW COMMISSION

6. In response to General Assembly resolution 2669 (XXV) of 8 December 1970, the International Law Commission of the United Nations took up the topic of "the law of non-navigational uses of international watercourses" in 1971. Following successive reports by four special rapporteurs since 1974, the Commission concluded its first reading of a set of 32 draft articles at the forty-third session (Geneva, 29 April to 19 July 1991). These draft articles which will now be circulated by the Secretary- General to Governments for comments, are attached to the present report as appendix 3.

7. The general approach taken by the International Law Commission in developing these draft articles, and endorsed by the Sixth Committee of the United Nations General Assembly, is that of a framework agreement containing general principles and rules concerning all non-navigational uses of international watercourses, which can be applied and adjusted through specific watercourse agreements to suit the conditions of individual watercourses and the needs of the States concerned. According to draft article 2, the geographical and functional scope of these principles and rules extends to the entire hydrographic system (including surface and underground waters) of which a river or lake is a part. While reaffirming the principle of "equitable utilization" in draft article 5, the Commission made it clear in draft article 7 that all uses are subject to the overriding obligation not to cause appreciable harm to other States concerned.

8. While the draft articles primarily aim at the prevention of environmental harm, they also lay down standards of conduct the infringement of which will entail international responsibility. Consequently, there is a close relation between those draft articles and the ongoing work of the International Law Commission on State responsibility and on the related topic of "international liability for injurious consequences arising out of acts not prohibited by international law", summarized in the annual reports of the Commission (see the 1990 report in the Official Records of the General Assembly, Forty-fifth session, Supplement No. 10, A/45/10).

9. The Working Group may wish to take the above-mentioned regional and global drafting work into account when examining possible areas for the further development of international environmental law.

APPENDIX 1

List of Existing Multilateral Agreements and Instruments on Transboundary Freshwaters

(Not including bilateral agreements, or internal instruments of regional economic integration organizations)

		Parties
(1)	Convention Relating to the Development of Hydraulic Power Affecting More than One State (Geneva, 9 December 1923)	11
(2)	Convention Concerning Fishing in the Waters of the Danube (Bucharest, 29 January 1958)	6
(3)	Conventions on the Protection of Lake Constance Against Pollution (Steckborn, 27 October 1960) and on the Regulation of Water Abstractions from Lake Constance (Berne, 30 April 1966)	3
(4)	Protocol Concerning the Constitution of an International Commission for the Protection of the Mosel Against Pollution (Paris, 20 December 1961)	3
(5)	Convention on the International Commission for the Protection of the Rhine Against Pollution (Berne, 29 April 1963) as amended	6
(6)	Act Regarding Navigation and Economic Co-operation Between the States of the Niger Basin (Niamey, 26 October 1963) and related agreements (1964-1980)	9
(7)	Convention and Statute relating to the Development of the Lake Chad Basin (N'Djamena, 22 May 1964) as amended and supplemented (1972-1977)	4
(8)*	European Water Charter (Strasbourg, 6 May 1968)	(Council of Europe)
(9)	Treaty on the River Plate Basin (Brasilia, 23 April 1969) and related declaration (*Asunción, 3 June 1971)	5

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* Non-mandatory instruments marked by an asterisk.

(10)	Conventions Concerning the Status of the Senegal River, and Establishing the Senegal River Development Organization (Nouakchott, 11 March 1972) as amended and supplemented (1978)	3
(11)	Conventions for the Protection of the Rhine River Against Chemical Pollution, and Against Pollution by Chlorides (Bonn, 3 December 1976)	6
(12)*	Action Plan of the United Nations Water Conference (Mar del Plata, 25 March 1977), endorsed by General Assembly resolution 32/158 of 19 December 1977	(UNGA)
(13)	Agreement for the Establishment of an Organization to Manage and Develop the Kagera River Basin (Rusumo, 24 August 1977) and related agreement (1981)	4
(14)*	Recommendations on Water Management Policies and Instruments, adopted by the Council of the Organisation for Economic Co-operation and Development (Paris, 5 April 1978)	(OECD)
(15)	Conventions Relating to the Status of the River Gambia, and the Creation of the Gambia River Basin Development Organization (Kaolack, 30 June 1978) as amended (1981)	4
(16)	Treaty for Amazonian Co-operation (Brasilia, 3 July 1978) and related declaration (*Manaus, 6 May 1989)	8
(17)*	Principles Regarding Co-operation in the Field of Transboundary Waters, adopted by the United Nations Economic Commission for Europe (Geneva, 10 April 1987)	(ECE)
(18)	Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System (Harare, 28 May 1987)	5
(19)*	Charter on Ground-Water Management, adopted by the United Nations Economic Commission for Europe (Geneva, 21 April 1989)	(ECE)
(20)*	Code of Conduct on Accidental Pollution of Transboundary Inland Waters, adopted by the United Nations Economic Commission for Europe (Geneva, 27 April 1990)	(ECE)

APPENDIX 2

Outline of the UN/ECE Draft Convention on the Protection and Use of Transboundary Watercourses and International Lakes*

Preamble

Article 1: Definitions

PART I - PROVISIONS RELATING TO ALL PARTIES

Article 2: General Provisions

Article 3: Prevention, control and reduction

Article 4: Monitoring

Article 5: Research and development

Article 6: Exchange of information

Article 7: [Responsibility and liability]

Article 8: Protection of information

PART II - PROVISIONS RELATING TO RIPARIAN PARTIES

Article 9: Bilateral and multilateral cooperation

Article 10: Consultations [Environmental impact assessment]

Article 11: Joint monitoring and assessment

Article 12: Common research and development

Article 13: Exchange of information between Riparian Parties

Article 14: Warning and alarm systems

Article 15: Mutual assistance

Article 16: Public information

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* Second draft prepared by the Working Party on Water Problems (of the Senior Advisers to ECE Governments on Environmental and Water Problems, United Nations Economic Commission for Europe) at its fourth special session in May 1991; full text in document ENVWA/WP.3/R.19/Rev.1. Provisions under further negotiation are shown in square brackets.

PART III - INSTITUTIONAL AND FINAL PROVISIONS

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Article 19: Secretariat

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Annex I: Definition of the term "best available technology"

Annex II: Guidelines for developing water-quality objectives and criteria

Annex III: [Arbitration]

APPENDIX 3

Draft Articles on the Law of the Non-navigational Uses of International Watercourses*

Part I

INTRODUCTION

Article 1

Scope of the present articles

1. The present articles apply to uses of international watercourses and of their waters for purposes other than navigation and to measures of conservation related to the uses of those watercourses and their waters.

2. The use of international watercourses for navigation is not within the scope of the present articles except in so far as other uses affect navigation or are affected by navigation.

Article 2

Use of terms

For the purposes of the present articles:

(a) "international watercourse" means a watercourse, parts of which are situated in different States;

(b) "watercourse" means a system of surface and underground waters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus;

(c) "watercourse State" means a State in whose territory part of an international watercourse is situated.

Article 3

Watercourse agreements

1. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present articles to the characteristics and uses of a particular international watercourse or part thereof.

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* As adopted in first reading by the International Law Commission of the United Nations at its forty-third session (Geneva, 29 April-19 July 1991).

2. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not adversely affect, to an appreciable extent, the use by one or more other watercourse States of the waters of the watercourse.

3. Where a watercourse State considers that adjustment or application of the provisions of the present articles is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

Article 4

Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to an appreciable extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on, and in the negotiation of, such an agreement, to the extent that its use is thereby affected, and to become a party thereto.

Part II

GENERAL PRINCIPLES

Article 5

Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal utilization thereof and benefits therefrom consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present article.

Article 6

Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) the social and economic needs of the watercourse States concerned;

(c) the effects of the use or uses of the watercourse in one watercourse State on other watercourse States;

(d) existing and potential uses of the watercourse;

(e) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(f) the availability of alternatives, of corresponding value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

Article 7

Obligation not to cause appreciable harm

Watercourse States shall utilize an international watercourse in such a way as not to cause appreciable harm to other watercourse States.

Article 8

General obligation to cooperate

Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity and mutual benefit in order to attain optimum utilization and adequate protection of an international watercourse.

Article 9

Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange reasonably available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature, as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not reasonably available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10

Relationship between uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys an inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to the principles and factors contained in articles 5 to 7, with special regard to the requirements of vital human needs.

Article 11

Information concerning planned measures

Watercourse States shall exchange information and consult each other on the possible effects of planned measures on the condition of an international watercourse.

Article 12

Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have an appreciable adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13

Period for reply to notification

Unless otherwise agreed, a watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate their findings to it.

Article 14

Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation, and shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15

Reply to notification

1. The notified States shall communicate their findings to the notifying State as early as possible.

2. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall communicate this finding to the notifying State within the period referred to in article 13, together with a documented explanation setting for the reasons for the finding.

Article 16

Absence of reply to notification

If within the period referred to in article 13, the notifying State receives no communication under paragraph 2 of article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

Article 17

Consultations and negotiations concerning planned measures

1. If a communication is made under paragraph 2 of article 15, the notifying State and the State making the communication shall enter into consultations and negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period not exceeding six months.

Article 18

Procedures in the absence of notification

1. If a watercourse State has serious reason to believe that another watercourse State is planning measures that may have an appreciable adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth the reasons for such belief.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period not exceeding six months.

Article 19

Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such cases, a formal declaration of the urgency of the measures shall be communicated to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

Part IV

PROTECTION AND PRESERVATION

Article 20

Protection and preservation of ecosystems

Watercourse States shall, individually or jointly, protect and preserve the ecosystems of international watercourses.

Article 21

Prevention, reduction and control of pollution

1. For the purposes of the present articles, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually or jointly, prevent, reduce and control pollution of an international watercourse that may cause appreciable harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to establishing lists of substances, the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22

Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in appreciable harm to other watercourse States.

Article 23

Protection and preservation of the marine environment

Watercourse States shall, individually or jointly, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Part V

HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 24

Prevention and mitigation of harmful conditions

Watercourse States shall, individually or jointly, take all appropriate measures to prevent or mitigate conditions that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltations, erosion, salt-water intrusion, drought or desertification.

Article 25

Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct as for example in the case of industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

Part VI

MISCELLANEOUS PROVISIONS

Article 26

Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

(a) planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) otherwise promoting rational and optimal utilization, protection and control of the watercourse.

Article 27

Regulation

1. Watercourse States shall cooperate where appropriate to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless they have otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 28

Installations

1. Watercourse States shall within their respective territories employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has serious reason to believe that it may suffer appreciable adverse effects, enter into consultations with regard to:

(a) the safe operation or maintenance of installations, facilities or other works related to an international watercourse; or

(b) the protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

Article 29

International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall not be used in violation of the principles and rules of international law applicable in international and internal armed conflict and shall enjoy the protection accorded by those principles and rules.

Article 30

Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present articles, including exchange of data and information, notification, communication, consultations and negotiations through any indirect procedure accepted by them.

Article 31

Data and information vital to national defence or security

Nothing in the present articles obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32

Non-discrimination

Watercourse States shall not discriminate on the basis of nationality or residence in granting access to judicial and other procedures, in accordance with their legal systems, to any natural or juridical person who has suffered appreciable harm as a result of an activity related to an international watercourse or is exposed to a threat thereof.

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Item 5 of the provisional agenda

OTHER LEGAL, INSTITUTIONAL AND RELATED MATTERS, AS WELL AS LEGAL AND INSTITUTIONAL ASPECTS OF CROSS-SECTORAL ISSUES, INCLUDING THOSE REFERRED TO WORKING GROUP III BY WORKING GROUP I, WORKING GROUP II AND THE PLENARY OF THE PREPARATORY COMMITTEE

Progress Report on Institutions

Report of the Secretary-General of the Conference

I. Introduction

1. It will be recalled that at the second session of the Preparatory Committee there was little discussion or negotiation on the contents of the report of the Secretary-General of the Conference entitled "Progress Report on Institutions" (A/CONF.151/PC/36) due primarily to the shortage of time. The contents of that report and the issues and questions raised therein remain a valid basis for the Committee's deliberations on the subject at its August session. The present report should, therefore, be regarded as an addendum to PC/36. The two papers should be considered together and the UNCED secretariat would appreciate guidance from the Committee on both.

GE.91-61802/1023H

2. The process of forging agreement in the Prep.Com. in respect of institutions must now begin and proceed parallel with consideration of the substantive issues to be included in Agenda 21 and related financial and other Cross-Sectoral issues. Final agreement on specific institutional arrangements or rearrangements will, of course, have to await agreement by the Committee on recommendations regarding these other issues which will give rise to a number of institutional proposals. "Agenda 21" is of particular importance in this context.

3. It is equally evident that the extensive range of institutional issues raised in PC/36 and in the present report be considered by the Prep.Com. in the context of the ongoing dialogue on the structural reforms of the economic, social and related fields of the United Nations System. The UNCED decisions on the institutional implications of integrating environment and development will undoubtedly have a significant impact on the system as a whole and are bound, therefore, to greatly affect and be affected by the debate on the overall reforms.

II. Recent Developments

4. The subject of restructuring and revitalization of the United Nations in the economic, social and related fields has preoccupied the General Assembly and the ECOSOC for many years. Since 1986 in particular (following the report of the G-18) both principal organs have dealt with the subject on a continuous basis without significant results. In the latest episode the General Assembly, at its resumed forty-fifth session on 13 May 1991, adopted by consensus resolution (A/Res/45/264) on the subject. It contains basic principles and guidelines and certain measures for the restructuring and revitalization of the Economic and Social Council. Issues relating to the composition of the ECOSOC and the complex subject of the subsidiary machinery of both ECOSOC and the General Assembly, as well as the review of the secretariat, will be dealt with at future sessions of the General Assembly.

5. The Secretary-General is requested to submit a progress report on these matters to the General Assembly at its forty-seventh session (1992). The General Assembly itself is also scheduled to review in 1993 the whole subject of restructuring and revitalization of the United Nations in the economic, social and related fields. Members of the Prep.Com. will no doubt keep these timetables in mind when considering institutional aspects of UNCED.

6. The basic principles and guidelines adopted by the General Assembly in the above resolution are of direct relevance to UNCED. They can be summarized as follows:

(a) restructuring is primarily the responsibility of Member States. The Secretary-General is requested to "assist and cooperate";

(b) political will is an essential prerequisite for reform;

(c) the exercise should aim at achieving greater complementarity between the bodies and organs of the United Nations with the General Assembly;

(d) the preservation of the "democratic principles" which underfirm the decision-making process of the United Nations;

(e) the need to preserve and strengthen transparency and openness;

(f) the most efficient and effective use of the financial and human resources of the United Nations system in the economic, social and related fields;

(g) the importance of the ongoing revitalization of the ECOSOC.

III. Environment and Development Coordination

7. The continuous preoccupation of the General Assembly and ECOSOC over the years, as well as institutions outside the United Nations system, with the question of reforms of the United Nations economic and social machinery demonstrates the complexity of that structure and the growing need to streamline it and enable it to play a central role in meeting the challenges facing the international community. The integration of environment and development at all levels and throughout the United Nations system clearly represents a formidable new such challenge. As explained in paragraph 1 of PC/36, it is widely recognized that one important result of UNCED is expected to be the substantial strengthening of the mandate and capacity of UNEP, which is mandated to be the coordinator of the environmental activities of the United Nations system. The ECOSOC, under the authority of the General Assembly, on the other hand, with the secretariat support headed by the Director-General, has certain responsibilities for coordination of United Nations and United Nations system situations in relation to development. It is evident, however, that quite aside from the question of integration - in which environmental considerations are or should be taken into account in activities aimed at development goals - there is no systematic means to ensure coordination at either the intergovernmental level or the secretariat level, of different parts of the United Nations and and United Nations system that may be operating in divergent manners.

8. In recent years, a general recognition has emerged on the need for new and innovative overall arrangements to remedy these problems of coordination and provide the system with a better sense of direction, but we are far from a consensus on how this should be done. While this recognition predates the UNCED process, it is obvious that the formidable task of integrating environment and development transforms the need for such new arrangements from the realm of desirable reforms to that of an imperative and central component of sustainable development.

IV. The Intergovernmental Level

9. Most reform efforts by the General Assembly and ECOSOC have concentrated on the intergovernmental machinery, a complex area where experience thus far has shown how difficult it is to overcome certain stubborn constraints whenever changes have been attempted.

10. In addition to the ideas and suggestions contained in PC/36, a number of proposals have been advanced which are directly relevant to the possible results of and follow-up to the United Nations Conference on Environment and Development. The following is a summary of the main proposals for new or improved intergovernmental machinery which the Preparatory Committee may wish to consider.

11. Sustainable Development Commission -

One idea calls for the establishment of a "Sustainable Development Commission" to which all United Nations bodies, agencies and programmes as well as the "treaty" secretariats involved in the area of environment and development would be accountable. It would meet annually and examine policies and programmes for promoting global action on environment and development and would be both a political deliberative body and coordinating mechanism for the United Nations system's activities in this area. It could also be convened on an emergency basis to deal with environment-related disasters and crises. Although such a Commission has been likened to the Commission on Human Rights, its exact terms of reference and its hierarchical place within the structure of the United Nations system remain to be defined.

12. Policy Overview and Integration -

A number of other proposals have been made for establishment of a high-level deliberative body at the political level which would provide a forum for overview and policy coordination of environment issues and their integration with other major issues to which they relate in the security, economic, social, humanitarian and commons areas. Some suggest that this be done through establishment of an "Environmental Security Council"; or a Committee of the General Assembly, supplemented, perhaps, by a special committee of the Security Council to deal with the issues which are security-related. It is also suggested that these functions could be performed by according to the Trusteeship Council a new mandate as the forum in which Member States exercise their trusteeship for the integrity of the global environment and commons.

13. Economic Security Council -

An earlier proposal calls for the creation of an "Economic Security Council" composed of around 24 members, representing all groups of Member States, as the centrepiece of the "economic United Nations" parallel and equal to the "political United Nations". The Council would be supported by:

- an interdisciplinary central secretariat with a large staff of highly qualified experts; and

- a number of smaller sectoral secretariats maintained at the level of each of the agencies.

The Council would bring together the competent ministers, depending on the problems on the agenda, and the central secretariat would be led by a group of independent persons (commissioners).

14. International Development Council -

Another proposal, emanating from the Nordic project on the "United Nations in Development" calls for the creation of an "International Development Council" within the United Nations to meet the need for a high-level forum for member states to discuss development issues and give overall policy guidance for the United Nations operational activities for development. If this concept were enlarged to include the integration of environment and development it would come very close to the proposal referred to in paragraph 11 above for establishing a "Sustainable Development Commission".

15. Revitalized Economic and Social Council -

In principle, most if not all of the functions envisaged for the proposed new intergovernmental mechanisms referred to above could be undertaken by ECOSOC, although it is clear that in order to do so there would have to be a very significant improvement in its credibility and strengthening of its effectiveness. Reform of ECOSOC has been the subject of perennial discussion which has, unfortunately, not produced significant results. The conditions may now be much more conducive to reform and strengthening of ECOSOC, particularly in light of the results of the resumed forty-fifth session of the General Assembly (paras. 4-6 above) held in New York in April 1991.

16. The Stockholm Initiative -

The Stockholm Initiative on Global Security and Governance which was held last April has proposed that a World Summit on Global Governance be convened similar to the meeting in San Francisco and at Bretton Woods in the 1940s. To prepare the ground for such a summit the participants in the Stockholm Initiative called for the establishment of an independent International Commission on Global Governance as a matter of priority. Whether the Commission is initiated by the United Nations through a decision by the General Assembly or otherwise, they stressed that it must be composed of individuals functioning in their personal capacities. The Commission report would become the basis for the deliberations at the World Summit on Global Governance. They also stated in their report that until such a summit can be convened (in 1995, the fiftieth anniversary of the United Nations?) "the Commissions work, together with the preparations for UNCED, will also contribute to the discussions within the United Nations on these issues".

V. Secretariat

17. As stated above, efforts at reforms especially by the General Assembly and the ECOSOC have concentrated on changes in respect of intergovernmental institutions. There has been less serious consideration of reforming the secretariats of the United Nations itself and those of its agencies and programmes, although a number of constructive changes have been made by the Secretary-General. On the basis of both mandates and experience, it is, at least in principle, much easier to bring about desirable changes at the secretariat level. The Charter gives the Secretary-General considerable authority in the administrative area although some of the prerogatives of the office have been eroded in practice over the years.

18. A great deal of streamlining and more effective coordination of United Nations activities in the environmental and development area could be achieved through secretariat reforms, some of which may require simple endorsement by the General Assembly. Indeed, it is difficult to envisage the achievement of the elusive goals of priority setting and coherent system-wide and coordinated programming and monitoring without a leading role by a revitalized secretariat. A number of ideas and proposals have recently been advanced on the subject of organization of the secretariat which are relevant to the issues being addressed by UNCED.

19. The report of the World Commission on Environment and Development, "Our Common Future", points to the "need for a high-level centre of leadership for the United Nations system as a whole with capacity to assess, advise, assist and report on progress made and needed for sustainable development. That leadership should be provided by the Secretary-General of the United Nations ... who should constitute under his chairmanship a special United Nations Board for Sustainable Development". The principal function of the Board would be to agree on continued tasks to be undertaken by the agencies to deal effectively with the many critical issues of sustainable development that cut across agency and national boundaries. In this context proposals have also been made for the revitalization of the Environmental Coordinating Board.

VI. Evaluation and Review

20. Adoption by UNCED of Agenda 21 would need to be accompanied by a decision on a process for review and evaluation of performance and identification of new needs and priorities. At the political level, these functions could be performed by any one of the intergovernmental mechanisms proposed above as one of its most important responsibilities. As the broad institutional reform required for strengthening the integration of environment and development at the intergovernmental and secretariat levels may not be put in place until some time after the 1992 Conference, it may be necessary to consider interim arrangements. This could take the form of periodic review by the United Nations General Assembly and its subsidiary bodies, supported by interim secretariat arrangements.

21. It may also be useful in this event to consider a specific ad hoc process of evaluation and review of Agenda 21 and other decisions taken at UNCED at a reasonable interval following the Conference.

22. Closely related to this is the proposal that an entity be established independent of the United Nations but with its blessing and cooperation to provide objective and authoritative evaluations of important environment, development and related issues, including periodic review of progress in respect of implementation of Agenda 21, point up gaps in performance as well as new needs and priorities and "early warning" of impending risks and opportunities. In addition to performance information on activities underway or planned as part of Agenda 21, this would also call for the best available scientific knowledge and data and information available from such sources as UNEP's GEMS, Infoterra and GRID programmes, and UNDP Human Development Index. This material could be reviewed by a relatively small independent organization drawing on the scientific and intellectual resources of research institutions

and important scientific bodies like the International Council of Scientific Unions (ICSU) and the World Conservation Union (IUCN). Its reports and recommendations would provide an important basis for the deliberations of the intergovernmental body.

VII. **Risk Assessment Capacity**

23. Decision-making at the political level on environmental matters often has to take place in the face of scientific uncertainty or even scientific dispute.

24. Many sources of data and information are limited to particular sectors or phenomena which provide important, but only partial, elements of what is happening in the total cause and effect system of which they are part. Also, in some cases, they may be constrained by political or industry considerations that could call into question their objectivity. This can produce misleading or discordant signals to policy makers and the public which do not provide a sound or adequate basis for policy and decision making. The early signs of emerging environmental risks are often likely to be inconclusive and controversial. Yet it is often at these early stages that policy makers and the public need the benefit of the best possible scientific and expert guidance to avoid the dangers either of premature or ill-founded responses or the other extreme of unwise delay in responding which may compound the risks involved.

25. An Environmental Review Commission, or similar entity, could be accorded the responsibility to review and evaluate data and information from all principal sources in the context of the overall cause and effect system and provide objective assessments, guidance and "early warning" to the world community, through the United Nations. The Intergovernmental Panel on Climate Change demonstrates the usefulness of such an exercise. But it is not in itself a prototype for this proposal as it combines the intergovernmental with the expert mechanisms. (Such a combination may be more relevant when a technical evaluation is to support a specific negotiating process.)

26. An independent, objective mechanism of this kind could be established with the support of governments and private sources and the active cooperation of such organizations as ICSU and IUCN. It would not need to have a large staff of its own but rather could operate on the basis of convening review and assessment panels, drawing on the best scientific, professional and policy institutions and expertise. It would deal with issues it believes are important as well as responding to requests from the United Nations, from other intergovernmental bodies, governments and non-governmental organizations.

27. The World Commission on Environment and Development pointed out that while a good deal of work is being done in this area, "there is no recognized international non-governmental centre of leadership through which the efforts of these groups can be focused and coordinated". It recommended the establishment of a Global Risks Assessment Programme designed to carry out the kinds of functions contemplated above which would function as a mechanism for cooperation amongst largely non-governmental, national and intergovernmental organizations, scientific bodies and interested groups.

VIII. Environmental Emergencies

28. The number and scale of environmental emergencies has been increasing and is likely to increase substantially in future. There is a strong likelihood of more Bhopals, Chernobyls and Valdez-type oil spills. And the massive oil spill and oil-well fires which were the products of deliberate acts of conflict in the recent Persian Gulf War point to the need for stronger international mechanisms to prevent such tragedies as well as more effective capacities for responding to them.

29. There are other emergencies, such as famine and natural disasters, which may be related to or compounded by environmental factors and while the capacity of the United Nations to respond to such emergencies also needs strengthening, this can perhaps best be done by changes in the existing machinery rather than through a new environmental emergency response system.

30. Emergencies that are directly environmental in character, e.g. oil spills and large emissions of toxic or radioactive substances, are diverse both in their nature and causes and in the locations in which they may occur. Accordingly, they do not lend themselves readily to a highly-centralized response capacity. The principal requirement is for a greater capacity within the United Nations to identify the best capabilities available in various parts of the world of the kind required to deal with the emergencies most likely to occur, make arrangements to ensure the availability of such capacities and, in cooperation with relevant national and regional entities, monitor and be capable of rapidly mobilizing appropriate and effective responses to emergencies as they occur. At the forty-fourth session of the General Assembly, during which the Assembly approved resolution 44/224 of 22 December 1989 in which it, inter alia, recognized the need to strengthen international cooperation in monitoring, assessing and anticipating environmental threats.

31. The Government of the USSR has proposed the setting up of a Centre for emergency environmental assistance and the Government of Switzerland has offered to provide host facilities for such a centre. By its decision 16/9 of 31 May 1991, the Council endorsed UNEP's Executive Director's proposal to proceed with the development, on an experimental basis, of a United Nations centre for urgent environmental assistance, acting in close cooperation and in coordination with other United Nations agencies, focusing on assessment of and responses to man-made environmental emergencies. The mechanism would maintain rosters of experts and a list of appropriate equipment to be used in such emergencies, ensuring that that did not duplicate the existing activities and responsibilities under existing international treaties and of other United Nations bodies in those fields and that it maintained proper liaison with them.

IX. National and Regional Capacity Building

32. One of the principal constraints on the development progress of developing countries, as well as on their ability to participate fully in international environmental and related development cooperation, is the inadequacy of their scientific, technological, professional and related institutional capacities. This subject is dealt with more fully in document

A/CONF.151/PC/53. It envisages establishment of a "sustainable development and technology support system" in each of the developing regions to strengthen and support the further development of and cooperation amongst indigenous institutions and programmes. It could function within the framework of the Sustainable Development Networks being established on the initiative of UNDP and link the institutions required to support sustainable development in the countries of the region together so that each can benefit from the knowledge, experience and capacities of the others. Linkages could also be established with other regional networks as well as with institutions and sources of information and support in industrialized countries. To ensure the effective functioning of these systems coordinating centres would have to be established, either in existing or new institutions, in each region or sub-region.

33. A proposal along these lines is being developed in cooperation with UNDP, the Regional Development Banks, UNEP, the United Nations Economic Commissions in each region and other regional, sub-regional and United Nations organizations and agencies.

X. Other National and Regional Institutional Needs

34. Implementation of Agenda 21 will also require strengthening of and additional support for regional organizations and intergovernmental fora in each region and particularly the mechanisms required to ensure effective coordination and cooperation. However, the international institutional mechanisms, at both global and regional levels, are primarily based on and supportive of the related institutions at the national level. Implementation of Agenda 21 will require substantial institutional changes and strengthening at the national level.

35. Recommendations in respect of institutional issues at the regional level and national level cannot be fully considered until the Preparatory Committee has been able to take full account of the decisions to be made in respect of the issues being considered by its Working Groups, the recommendations of the regional preparatory conferences and, of particular importance, National Reports.

XI. Cooperation with bodies outside the United Nations

36. While the United Nations must of necessity play a central role in this process, it is evident that any continuing programme designed to achieve sustainable development cannot be confined to the United Nations system. The central task of the United Nations is to mobilize and coordinate inputs not only from within the United Nations family of organizations and programmes, but also those of IGOs and NGOs outside the system, the scientific community, business, labour organizations, and other important sectors and constituencies. It should be noted in this regard that the Working Party approach adopted by the UNCED secretariat has demonstrated the value of this and has worked well in integrating the inputs of all concerned agencies and organizations in the preparatory process. This experience has some important lessons for the follow-up to the Conference, particularly in monitoring and reporting on the implementation of Agenda 21. Indeed, in the light of UNCED experience thus

far, perhaps the time has come for a major review of how the United Nations can relate more effectively on an ongoing basis to these important actors outside the system.

XII. Concluding Observations

37. As stated in paragraph 8 of A/CONF.151/PC/36, the extensive range of institutional issues involved in the UNCED process have to be considered in the context of the broader need for organizational reforms of the economic, social and related fields of the United Nations system which have been the subject of a great deal of study and dialogue in recent years and in particular recently in relation to the resumed session of the United Nations General Assembly held in April 1991. It is unlikely that any of the proposals cited above for significant overall reforms in the United Nations system, whether at the intergovernmental or secretariat level, will be instituted or even crystalized by the time of the Earth Summit next year. Accordingly, the Preparatory Committee's recommendations to UNCED on institutional arrangements can have an important impact on the United Nations system as a whole and influence the debate and decisions on overall restructuring and reforms of the system.

38. One question of fundamental importance in respect of UNCED is: which unit of the United Nations Secretariat will have overall responsibility under the authority of the Secretary-General for monitoring, reviewing and reporting the progress on the implementation of Agenda 21 and to which intergovernmental organ or organs should it report? There is at present no movement towards the creation of a separate new organization to deal with the integration of environment and development. It must, therefore, be based on modification and strengthening of existing structures and arrangements.

39. Finally, the importance of the National Reports and the reports of the regional preparatory conferences cannot be underlined too strongly. The institutional aspects of these reports at the national and regional levels must be taken fully into account by the Preparatory Committee in formulating its recommendations on institutions.